File No.

SUPREME COURT. U. S.

SPECIAL TERM, June 15, 1953

~~October Term, 19 52.~~

Term No. 1 Misc.

Julius Rosenberg et al.,

Petitioners,

vs.

Wilford L. Denno, Warden of Sing Sing Prison

Motion for leave to file and petition for an original writ of habeas corpus.

Filed June 15, *19* 53.

U. S. GOVERNMENT PRINTING OFFICE 16—17577-3

City of Washington)
District of Columbia) SS

JOHN F. FINERTY, being duly sworn, says that he is counsel for petitioners Julius and Ethel Rosenberg and duly authorized by them to make the foregoing motion and file the foregoing petition on their behalf. That he knows and is fully acquainted with the contents of the foregoing petition and statements of fact therein are true to the best of his knowledge and belief.

John F. Finerty

Subscribed and sworn to before me ~~a Notary Public~~ this 15th day of June 1953.

Harold B. Willey,
Clerk, U. S. Supreme

IN THE SUPREME COURT OF THE UNITED STATES

No 1 Misc

JULIUS ROSENBERG and ETHEL ROSENBERG,

Petitioners,

v.

WILFORD L. DENNO,
Warden of Sing Sing Prison,

Respondent.

MOTION FOR LEAVE TO FILE PETITION FOR ORIGINAL WRITS OF HABEAS CORPUS

To the Honorable Supreme Court of the United States:

Your petitioners, Julius Rosenberg and Ethel Rosenberg, respectfully move the Court that leave be granted them to file the attached joint petition for an original writ of habeas corpus.

Julius Rosenberg
Ethel Rosenberg

By _____
Emanuel H. Bloch

_____
Malcolm Sharp

_____
John F. Finerty

Counsel for Petitioners

IN THE SUPREME COURT OF THE UNITED STATES

JULIUS ROSENBERG and ETHEL ROSENBERG,

Petitioners,

v.

WILFORD L. DENNO,
Warden of Sing Sing Prison,

Respondent.

PETITION FOR WRIT OF HABEAS CORPUS

To the Honorable the Supreme Court of the United States:

The joint petition of Julius Rosenberg and Ethel Rosenberg respectfully represents:

I

That your petitioners are citizens of the United States and prior to their detention were residents of the City and County of New York, State of New York, where they had resided for many years.

II

That your petitioners are now unlawfully and unjustly imprisoned and restrained of their liberty and detained under authority of the United States of America in the custody of Wilford L. Denno, Warden of Sing Sing Prison, Ossining, in the State of New York.

III

That the sole claim and authority by which said Wilford L. Denno, Warden of Sing Sing Prison so restrains and retains your petitioners are commitments by the District

Court of the United States for the Southern District of New York.

IV

That such commitments were based upon indictments, verdicts of guilty, judgments of conviction and sentences of death against your petitioners for conspiracy to transmit information "relating to the national defense to the Soviet Union, with the intention to advantage that nation (although not to injure the United States", in violation of Section 34, Title 50, U. S. Code (now Section 784, Title 18, U. S. Code). Such judgments of conviction and sentences of the petitioners to death were entered on April 5, 1951, by the Honorable Irving I. Kaufman, a judge of the District Court of the United States for the Southern District of New York. Pursuant to these judgments and sentences, the petitioners were committed to and are presently detained in the death house at said Sing Sing Prison. The United States Court of Appeals for the Second Circuit affirmed the judgments of conviction on February 25, 1952, and denied rehearing on April 8, 1952 (195 F. 2nd 583, 609). This Court denied certiorari on October 13, 1952 (344 U.S. 838), and denied rehearing on November 17, 1952 (344 U.S. 889) (Black J., in each instance noted his opinion that the petition should be granted).

On November 24, 1952, petitioners filed in the United States District Court for the Southern District of New York a joint petition under Section 2255 of Title 28, U. S. Code, to vacate and set aside the petitioners convictions and sentences. The District Court on December 10, 1952, dismissed such joint petition without a hearing (108 F. Supp. 798). The Court of Appeals for the Second

Circuit affirmed the order of the District Court on December 31, 1952 (200 F. 2nd 666), and on May 25, 1953, this Court denied certiorari (Docket No. 687, October Term 1952), Justices Black and Douglas noting their opinion that certiorari should be granted. On May 25, 1953, petitioners petitioned this Court for rehearing on such denial for certiorari, which rehearing the Court denied by its order of today, June 15, 1953. It therefore appears that petitioners before filing this petition for habeas corpus have, as required by Section 2255, Title 28, U. S. Code, exhausted their remedies under that Section.

By various orders the date set for the execution of your petitioners has been extended from time to time and is now set for the week of June 15, 1953, and customarily under the procedure at Sing Sing Prison would take place at any time on June 18, 1953.

V

That the judgments of conviction and sentences of death thereon commitment, imprisonment and restraint of your petitioners are and each of them is, without due process of law in violation of the Fifth Amendment to the Constitution of the United States by reason of the facts hereinafter set forth.

VI

Said verdicts, judgments of conviction, sentences, commitments, imprisonments and restraints of your petitioners were obtained by the United States of America by the presentation against your petitioners by said United States through its then District Attorney and his assistants of the perjured testimony of certain witnesses.

All of such perjured testimony was of a nature that it could not have been innocently used, and must have been and was known by said District Attorney and his assistants to be perjured at the time it was offered in the trials of your petitioners upon which said convictions were had.

The perjured testimony to which this petition is particularly directed is the perjured testimony on trial of your petitioners given by Government witness David Greenglass, and especially the testimony of Greenglass in connection with impounded Government Exhibit 8 and his untranscribed testimony relating thereto. It will be assumed for the purposes of this petition that for the reasons stated in Footnote 1, page 2 of the petitioners Supplemental Brief in Support of their Petition for Rehearing that it is reasonable to assume, and that the jury would have assumed, that if Greenglass' testimony in connection with Exhibit 8 and his untranscribed testimony relating thereto was perjured, his testimony in connection with Government Exhibits 2, 6 and 7 was also perjured, and thereby his entire testimony impeached.

Your petitioners further allege that without the perjured testimony of said Greenglass the judgments of conviction against your petitioners could not have been sustained and that the Court of Appeals for the Second Circuit in affirming the convictions of your petitioners expressly so found, 195 F. 2nd 583 (C.R. 1648).

VII

Your petitioners further allege that the sentences of death entered against your petitioners were avowedly based and undertaken to be justified solely on

the stated assumption of the trial judge in imposing such sentences that your petitioners had actually transmitted to the Soviet "the secret of the atom bomb". (C.R. 1614) *

Your petitioners allege that your petitioners were neither indicted, tried or convicted of actually transmitting to the Soviet such secret of the atom bomb, and that there was no evidence whatever of record to support the assumption of the trial judge that petitioners had actually transmitted "the secret of the atom bomb" to the Soviet.

VIII

Your petitioners allege that the only evidence of record that Greenglass transmitted even to the Rosenbergs "the secret of the atom bomb" as a whole (aside from the complete absence of any evidence of the transmission by the Rosenbergs to the Soviet of such "secret of the atom bomb") is the perjured testimony of Greenglass in this respect fairly abstracted and analyzed in the appendix to petitioners' Supplemental Brief in Support of the Petition for Rehearing herein. **

---

* The transcript references herein designated (C.R.) refer to the printed transcript before this Court in No. 111, October Term, 1951. Those designated (R.) refer to the printed transcript before this Court in No. 637, October Term 1952. Both such printed transcripts are incorporated by reference in this petition.

** There is evidence of record that Greenglass did transmit to the Rosenbergs in January 1945 the original of Government Exhibit 2, a drawing of a lens mold used in the atom bomb, and that shortly thereafter Greenglass transmitted to Gould the originals of Government Exhibits 6 and 7, also drawings of lens molds allegedly used in the atom bomb. For the purposes of this petition it will, however, be assumed that if Greenglass' testimony in connection with the impounded Government Exhibit 8, a sketch of a cross-section of the Nagasaki atom bomb, and his untranscribed testimony relating to component elements and principles of operation of that bomb, are perjured, Greenglass' testimony in relation to Government Exhibits 2, 6 and 7 must also be assumed to be perjured and impeached and would have been so assumed by the jury had the jury known of Greenglass' perjury in connection with Government Exhibit 8 and in his untranscribed testimony relating to that exhibit.

That testimony is substantially that Greenglass in September 1945 based solely on the information there specified allegedly gave the petitioners a drawing of a cross-section of the Nagasaki atom bomb and twelve pages of written matter descriptive of the component elements and the principles of operation of that bomb, and that impounded Government Exhibit 8 and Greenglass' untranscribed testimony relating to that exhibit represent, respectively, a substantially accurate reproduction of such sketch of a cross-section of the atom bomb and a substantially accurate paraphrase of such twelve pages of descriptive material. It is again to be noted that even were this evidence true, there is not a word of evidence that either of the petitioners ever transmitted to the Soviet or to any agent of the Soviet the secret of the atom bomb as a whole as represented by impounded Government Exhibit 8 and Greenglass' untranscribed testimony relating to that exhibit.

IX

At the time the Government introduced Greenglass' testimony as to Exhibit 8 and his untranscribed testimony relating to that exhibit, your petitioners knew that such testimony was untrue, and suspected that it was perjured. They were, however, taken wholly by surprise by such testimony, since no overt act was alleged in the indictment subsequent to June 1945. Moreover, as appears from the abstract and analysis hereinbefore set forth of Greenglass' testimony in the foregoing respects, such testimony is on its face inherently and implicitly incredible. Petitioners, however, on trial were prevented from showing that such testimony was affirmatively and explicitly incredible by

the refusal of the trial court to permit Colonel Darry, an expert atomic witness for the Government, to answer a question by defense counsel designed to show that Greenglass did not have the capacity or opportunity to have obtained the information necessary for the production by him in 1945 of the original of Exhibit 8 and of his untranscribed testimony relating to that exhibit. Petitioners allege that it is reasonable to assume on the basis of information subsequently herein set out that had Colonel Darry been permitted to answer this question, he would have so testified.

X

Petitioners allege that following their conviction they diligently sought to obtain testimony of qualified scientists showing that Greenglass could neither have had the intellectual and educational capacity nor the opportunity to obtain the information necessary to the production of the original of Exhibit 8 and the twelve pages of descriptive material relating to that exhibit purportedly paraphrased in Greenglass' untranscribed testimony. Petitioners were unable to obtain testimony to this effect in this country, because the atomic experts who would have been qualified to give such testimony were either employed by or under the control of the Government or considered themselves prevented by security regulations from giving such testimony. Petitioners ultimately, however, were able to obtain among others the affidavits of Dr. Kaiser, now a member of the British Atomic Commission, and of Dr. Hadamard, a distinguished French scientist, that

Greenglass, based on his own testimony on trial which they had read, did not have the educational qualifications or intellectual capacity to obtain the information necessary for the production of the original of Exhibit 8 or of the original of Greenglass' untranscribed testimony relating to that exhibit. Promptly on obtaining these affidavits they were placed before the District Court for the Southern District of New York by the petition under Section 2255 which, as has already been shown, was dismissed by the District Court, the dismissal affirmed by the Court of Appeals, and certiorari and rehearing refused by this Court by its order in Docket 687, October Term 1952, already referred to.

XI

As shown at pages 35 to 37 of the petition for certiorari in the Section 2255 proceedings, just referred to, and in the footnote, page 2 of the petitioners Reply Brief to the Government's Brief in Opposition in the proceedings for review before this Court in No. 687, October Term 1952, the opinion of the Court of Appeals in affirming the District Court in dismissing such Section 2255 petition shows that the Court of Appeals did not even know that such petition alleged any perjury whatever in connection with Government Exhibit 8, the cross-section of the Nagasaki atom bomb, or in connection with Greenglass' untranscribed descriptive testimony relating to that exhibit, nor did it know that the affidavits of Dr. Kaiser and Dr. Hadamard furnished affirmative evidence of such perjury. That in such opinion that on the contrary, the Court of Appeals assumed that the allegations

of such Section 2255 petition and such affidavits were directed solely to Government Exhibits 2, 6 and 7, drawings of the lens mold. Furthermore, a reference to the opinion of the District Court, supra, in such Section 2255 proceedings would show that that Court did not understand the basic distinction which those affidavits made between Greenglass' total incapacity and lack of opportunity to produce the originals of Government Exhibit 8, the cross-section of the atom bomb, and of his untranscribed descriptive testimony relating thereto, and his possible though improbable capacity to produce the originals of Government Exhibits 2, 6 and 7, drawings of the lens mold. It cannot be said, therefore, that the Court of Appeals in affirming the dismissal by the District Court of the Section 2255 petition affirmed the findings of the District Court that no perjury was shown in connection with Government Exhibit 8 and Greenglass' untranscribed testimony relating to that exhibit. Neither can the denial of certiorari by this Court be taken as an affirmative finding that no such perjury was shown.

XII

Since the filing by petitioners of their petitions for rehearing of the denial by this Court of certiorari to review the affirmance by the Court of Appeals of the dismissal of such Section 2255 proceedings by the District Court, there has come to the knowledge of petitioners new and conclusive evidence that Greenglass' testimony in connection with Government Exhibit 8 and his untranscribed testimony relating thereto was perjured.

This consists of a true copy of a telegram sent on June 12, 1953, to the President of the United States by

Dr. Harold Urey, and of the original of an affidavit by Dr. Urey dated June 13, 1953, voluntarily furnished counsel for petitioners and received by them on June 14, 1953.

XIII

This newly discovered evidence is largely self-explanatory.

It is noted that Professor Urey's affidavit particularly when read in light of the telegram to the President, affirms the opinion that Greenglass in view of his limited qualifications and limited access to personnel and information could not have transmitted to the petitioner the mathematical formulae and the chemical and physical processes, a knowledge of which is essential to the secret of the atom bomb, and that Greenglass' testimony that he transmitted such information to the petitioner in September 1945 and was later able to reproduce such information on trial as represented by Government's Exhibit 8 and his untranscribed testimony relating to that Exhibit is therefore perjured.

It is to be noted that Dr. Urey in his affidavit expresses the opinion that it would not have been impossible for Greenglass to have had opportunity and capacity to have obtained general information as to the general structure and arrangements of the component parts and materials used in the atom bomb. In this connection, however, it is to be noted that Greenglass own testimony as abstracted and analyzed in the appendix to petitioners Supplemental Brief in Support of their Petition for Rehearing herein already referred to and incorporated herein by reference, fails to show that Greenglass in fact ever availed himself of such

opportunity as he might possibly have had to obtain such information. Petitioners, moreover, believe that were Dr. Urey's attention directed specifically to the analysis of Greenglass' testimony in such respect, Dr. Urey would recognize that even though Greenglass might have had the capacity for obtaining the general information specified in Dr. Urey's affidavit, that his own testimony fails to show he ever availed himself of any opportunity he might have had actually to obtain such information.

XIV

Accepting as true Colonel Derry's testimony that impounded Government Exhibit 8 and Greenglass' untranscribed testimony relating thereto represent, respectively, a substantially correct cross-section of the Nagasaki atom bomb and a description of its component parts and principles of operation, it is obvious that such exhibit and untranscribed testimony cannot represent anything Greenglass gave the petitioners in 1945, but can only be and is a perjured concoction since devised during the trial, and probably after the indictments were brought against petitioners.

XV

In this connection it is to be noted that Dr. Urey's name appears as a witness for the Government under the list of Government witnesses submitted in connection with the indictments of the petitioners (C.R. 51-52) and that list also contains the names of the two other leading atomic scientists engaged in the production of the atom bomb, Dr. J. Robert Oppenheimer and Dr. George B. Kistiakowski.

As suggested at page 4 of petitioners Supplemental Brief in Support of their Petition for Rehearing in No. 687, October Term 1952, it is a fair inference that the Government did not call any of these witnesses on trial to corroborate the inherently incredible testimony of Greenglass with respect to Covernment Exhibit 8 and his untranscribed testimony thereon, because the Government knew that its own principal atomic scientists, though specified as Government witnesses, would not corroborate such testimony. It is also a fair inference that for the same reason the Government failed to offer any affidavits by Dr. Urey, Dr. Oppenheimer or Dr. Kistiakowski, in attempting to rebut the affidavits of Dr. Kaiser and Dr. Hadamard.

XVI

As already shown, your petitioners before filing this petition for habeas corpus have, as required by Section 2255 of Title 28, U. S. Code, exhausted their remedies under that Section. Furthermore, petitioners have been denied by the District Court of Appeals and by this Court any further stay of execution beyond the date now set, the present week of June 15.

It is obvious, therefore, that petitioners have not time to apply either to the District Court or the Court of Appeals for writs of habeas corpus, and that in view of the previous action of those courts it can reasonably be assumed that anysuch application would be futile.

Petitioners in applying therefore to this Court for the issuance of its original writs of habeas corpus desire to say that they do not wish unnecessarily to burden this Court with the hearing incident to the issuance of

such original writs by this Court. They would be willing, therefore, to have this Court in lieu of issuing its original writs of habeas corpus, direct the Court of Appeals or some judge thereof, or the District Court or some judge thereof, other than Judge Kaufman, to issue writs of habeas corpus, to hear such writs within a reasonable time, and in the meantime to stay the execution of petitioners pending the determination of the writ so issued and of any review that might be available should such determination be unfavorable.

Petitioners respectfully ask that should writs of habeas corpus issue either by this Court or under direction of this Court that provision be made for the production upon hearing of impounded Government Exhibit 8 and of Greenglass' untranscribed testimony relating thereto. Further that provision be made for the production of the Grand Jury minutes upon the indictments of the petitioners to determine whether such minutes contain any reference to the subject matter of Exhibit 8 or Greenglass' untranscribed testimony relating thereto.

Respectfully submitted,

Julius Rosenberg and Ethel Rosenberg

By _____

Emanuel H. Bloch
401 Broadway
New York, New York

Malcolm Sharp
School of Law
University of Chicago
Chicago, Illinois

John F. Finerty
120 Broadway
New York, New York

The affiant, Harold C. Urey, makes the following statement on oath as true to the best of his knowledge and belief:

1. I am Martin A. Ryerson Distinguished Service Professor of Chemistry at the University of Chicago. I received my Ph.D. degree in 1923 from the University of California. I have been a teacher and research investigator all of my adult life and have been a member of the faculties of the University of Montana, Johns Hopkins University, Columbia University and the University of Chicago. I joined the faculty of the latter institution in 1945. I have written widely in the fields of chemistry and physics including two books, "Atoms, Molecules, and Quanta," with A. E. Ruark, and "The Planets."

2. In 1934, I was awarded the Nobel Prize for the discovery of heavy hydrogen and have received many other awards for my scientific work.

3. As a teacher and research investigator I have had continuous opportunity to know and evaluate the abilities of men in connection with scientific and technical problems, including undergraduate and graduate students and men of the most advanced training and ability.

4. I have considerable general knowledge in regard to the structure of the atomic bomb and its mechanisms. During the war I was Director of the SAM laboratories of Columbia University which were charged with methods for separating the isotopes of hydrogen, boron, and uranium for use in connection with the atomic bomb.

5. I have read with care the entire record of the Rosenberg case.

6. On the basis of my general scientific and teaching background, my specific experience with the atomic bomb, and my knowledge of the record in the Rosenberg case, I have reached certain conclusions about the quality and importance of the information of the type David Greenglass could have transmitted to Russian espionage agents.

7. It appears from the record in the Rosenberg case that Dr. Klaus Fuchs was transmitting secret information about the bomb to Harry Gold, a Soviet courier, contemporaneously with David Greenglass.

8. I know David Greenglass' scientific qualifications only from the record in the Rosenberg case, but on the basis of that record I would state that he was not qualified scientifically or technically even at an undergraduate college level.

9. I did not know Dr. Klaus Fuchs personally, but I am well acquainted with his reputation among scientific men. Dr. Fuchs had a reputation as a scientist of first rank.

information at [illegible] the bomb.

12. I know that Dr. Fuchs was a member of the British team of scientists collaborating on the bomb and was stationed at Los Alamos for an extended period. He had access to detailed scientific reports, to scientific meetings where [illegible] were discussed, and knew the most capable and top level scientists on the Los Alamos project.

13. I know from the record in the Rosenberg case that David Greenglass testified to transmitting information about Fuchs and key personnel, about the lens mold, and about the structure of the bomb itself. This last item of evidence was impounded during the trial and is not a part of the public record. I have not seen the impounded testimony.

14. Information in regard to the atomic bomb project can be classified into two rough groups from the standpoint of espionage. In the first group are types of information which are easily and briefly transmitted even by non-technical personnel. These include size of project, number of people employed, names of key men, general lines of investigation which proved successful, general structure and arrangement of component parts, materials used successfully, etc. The second type of information consists of exact sizes, dimensions, exact mathematical formulae, exact chemical and physical processes, etc. This latter kind of material requires extensive reports prepared by well-trained scientists and engineers.

15. In view of his limited qualifications, his limited access to personnel and information, and in view of the nature of the essential know-how about the bomb, David Greenglass could have transmitted information of the first type described in paragraph 14, but he could not have transmitted the more exact information of the second type described in paragraph 13 above.

16. In view of his high level qualifications and his considerable access to personnel and information, Dr. Klaus Fuchs could have transmitted virtually all the information known about the bomb.

17. If there was espionage, I would regard the information that David Greenglass could have transmitted as secret and valuable, but I would not credit him with the major responsibility for the loss of atomic bomb secrets. I would state that the harm he could have done, although real, was simply not comparable to the harm Fuchs could have done, and probably did.

18. I know from the record in the case that the magnitude of the defendant's espionage activity, on the hypothesis of the prosecution, depends on the magnitude of Greenglass's espionage.

Harold C. Urey

State of: Ill.

County of: Cook

Subscribed and sworn before me this: 13th day of June

1953.

Dorothy Bethke
Notary Public
4946 Woodlawn Ave

TEXT OF TELEGRAM SENT BY DR. HAROLD UREY, FOREMOST ATOMIC SCIENTIST, TO PRESIDENT EISENHOWER ON FRIDAY AFTERNOON, JUNE 12

"The case against the Rosenbergs outrages logic and justice. It depends on the testimony of Greenglass and his wife, both confessed spies and alleged accomplices of the Rosenbergs. Greenglass is supposed to have revealed to the Russians the "secret" of the Atomic Bomb. Though the information supposed to have been transmitted could have been important, a man of Greenglass's capacity is wholly incapable of transmitting the physics, chemistry and mathematics of the Atomic Bomb to anyone. He and his wife were the only ones who pretended to connect the Rosenbergs with atomic espionage. New Evidence makes even more plain what was plain enough before, that the prosecution's case has no logic in it, and that it depends upon the blowing up of patently perjured testimony.

"I tried to see the Attorney General this past week but was unable to secure an appointment. On behalf of all those interested in the defense I ask to be allowed to present my understanding of the case to you, Mr. President."

Harold Urey

Issued as a public service by
the Washington office of
The National Committee to Secure Justice
in the Rosenberg Case
1967 Kalorama Road
Columbia 5-0302